IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

CRP.No. 821 of 2007()

AS.104/2006 of Ist ADDL.DISTRICT COURT, THRISSUR
OS.150/1995 of M.C.,VADAKKANCHERRY

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REVN. PETITIONER: RESPONDENT/DEFENDANT

JOSEPH, AGED 66 YEARS
S/O., MULLUR JOSEPH,
KUZHIYODE DESOM,
AATTOOR VILLAGE AND
THALAPPILLY TALUK

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS: APPELLANT.PLAINTIFF

SIVANANDHAN, AGED 50,
S/O. KUNJUNNY, PISANTHIPUNCHAYIL HOUSE
CHEPPILAKODE DESOM, ENKAKAD VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISNAN, J.

C.R.P.No. 821/2007

Dated this 12th day of September, 2007

O R D E R

This revision petition is preferred against the judgment of the I Additional Subordinate Judge, Thrissur, in A.S.104/2006. The said appeal was preferred against the judgment of the Munsiff, Vadakkancherry, in O.S.150/2005. The suit was one for realisation for an amount of Rs.10,000/- with interest. The suit was based on a promissory note. The matter was referred to a handwriting expert and he was examined as DW2 in the case. The expert opined that the signature which is put in the document and the signature which is sent for comparison were scientifically examined by him and the signature in the disputed document appeared to be one which is consciously written whereas in the other document it is written in a normal style and therefore, he was not able to give any definite opinion about the authenticity of those signatures. Relying on that, the Court below with the other attending circumstances dismissed the suit. Against that, the appeal was preferred. The appellate Court considered the handwriting expert's

opinion and also the evidence of PW1 and 2 and came to the conclusion that the preponderance of the probability is in favour of execution of Ext.A1 and decreed the suit.

2. When the C.R.P came up for admission the learned counsel would contend that the approach made by the appellate Court is erroneous in law especially when there is an expert's opinion staring on the plaintiff against his case. It is the settled principle of law that the expert's report is only an opinion and it is not conclusive. It is always not necessary that the Court has to simply and blindly follow the report of the expert to arrive at a decision when there is direct evidence before the Court and on analysis of the direct evidence, the conscience of the Court is satisfied regarding the execution of the documents. I do not feel that anything stands in the way of the Court arriving at a decision on the basis of the evidence adduced in this case. Now sitting in this civil revision jurisdiction, this Court is now called upon to consider whether there is irregularity, illegality and perversity in the approach made by the

appellate Court and for that limited purpose, I would refer to the evidence tendered in this case.

3. The suit document is Ext.A1. It is executed on 25.1.1995. Ext.B1 is a document which contains the signature of the defendant and Ext.A2 is a document of title relating to the property of the defendant. The plaintiff as PW1 had deposed before the Court that the defendant approached him on early morning hours of 25.1.1995 and he along with PW2 came to the shop and requested for the amount. He further deposed that he delivered the money to the defendant and PW2, Divakaran, prepared Ext.A1 and obtained the signature of the defendant in Ext.A1 and handed over the same to the plaintiff. It is further contended by him at a later point of time he executed a karar and handed over Ext.A2 document. Ext.A3 is the karar signed by the defendant at least in which the signature of the defendant is admitted by him. On the other hand, the defendant would contend that the plaintiff is indigent and he is not having financial resources and this is only fraudulent collusion between one Joseph, the second

witness and the plaintiff to defeat the case of the defendant.

4. PW2 also had been examined in this case. PW2 had spoken about his presence at the time of execution of Ext.A1. He had also admitted that Ext.A3 was also prepared by him and that Ext.A2 was handed over to PW1 by the defendant and therefore, the appellate Court on a re-appraisal of the evidence, found that the evidence of PW1 and 2 does not suffer from any serious infirmity and held that it is intrinsically reliable and inherently probable. In a civil suit it is a preponderance of the probability that may have to be looked into when confronted with the difficult situation of handing over the Ext.A2 document, the defendant would submit that he had handed over it to a broker and plaintiff had won over that broker and took the document from him and had created a case of this nature. It is too difficult to believe such a case. Till the institution of the suit, defendant had not effectively acted to get back the document which he had allegedly handed over to the broker. Therefore I hold that the appellate Court has

not committed any irregularity, illegality and there is no perversity also in the appreciation of the evidence. It is true that the report of handwriting expert does not help the plaintiff but that shall not be a sole criteria for deciding the case against the plaintiff. Handwriting expert has not given a definite opinion about the authenticity of the disputed signature and the signature that had been sent for comparison. It is only an evidence and it is not a confirmed opinion on which the Court could scientifically base its decision.

5. Therefore, on analysis of the entire materials, I hold that the judgment and decree of the appellate Court is not liable to be interfered with and therefore the Civil Revision Petition is dismissed.

M.N.KRISHNAN,
JUDGE

mrcs